

1 **SECTION 115.** 30.15 (1) (title) of the statutes is renumbered 30.381 (8) (title) and
2 amended to read:

3 30.381 (8) (title) OBSTRUCTIONS PENALIZED.

4 **SECTION 116.** 30.15 (1) (intro.) of the statutes is renumbered 30.381 (8) (a)
5 (intro.).

6 **SECTION 117.** 30.15 (1) (a), (b) and (c) of the statutes are renumbered 30.381
7 (8) (a) 1., 2. and 3. and amended to read:

8 30.381 (8) (a) 1. Unlawfully obstructs any navigable waters water and thereby
9 impairs the free navigation thereof of the navigable water.

10 2. Unlawfully places in ~~waters or in any tributary thereof~~ any body of water any
11 substance that may float into and obstruct any ~~such waters or~~ navigable water or
12 that may impede their the free navigation of a navigable water.

13 3. Constructs or maintains in any navigable waters, water any boom not
14 authorized by law or aids in the construction or maintenance therein, of any such
15 boom ~~not authorized by law~~.

16 **SECTION 118.** 30.15 (1) (d) of the statutes is renumbered 30.381 (2) (a) and
17 amended to read:

18 30.381 (2) (a) ~~Constructs~~ Any person who constructs or places any structure
19 or deposits any material in navigable waters in violation of s. 30.12 ~~or 30.13~~ shall
20 forfeit not less than \$100 nor more than \$500 for each offense. Each day during which
21 a structure or deposit of material exists in violation of s. 30.12 is a separate offense.

22 **SECTION 119.** 30.15 (3) (title) of the statutes is repealed.

23 **SECTION 120.** 30.15 (3) of the statutes is renumbered 30.381 (8) (b) and
24 amended to read:

1 30.381 (8) (b) Each day during which an obstruction, deposit, or structure
2 exists in violation of sub. (1) par. (a) is a separate offense.

3 **SECTION 121.** 30.16 of the statutes is renumbered 30.95.

4 **SECTION 122.** 30.18 (1) (intro.) of the statutes is created to read:

5 30.18 (1) DEFINITIONS. (intro.) In this section:

6 **SECTION 123.** 30.18 (1) (b) of the statutes is created to read:

7 30.18 (1) (b) “Large diversion” means a diversion that will result in a water loss
8 averaging, in any 30-day period, at least 2,000,000 gallons per day above a
9 permittee’s base level of water loss.

10 **SECTION 124.** 30.18 (2) (a) (intro.) of the statutes is amended to read:

11 30.18 (2) (a) *Streams Diversions from streams.* (intro.) ~~No~~ Unless a permit has
12 been issued under this section, no person may divert water from a stream ~~in this~~
13 ~~state without a permit under this section if the diversion meets either of the following~~
14 ~~conditions if any of the following applies:~~

15 **SECTION 125.** 30.18 (2) (a) 3. of the statutes is created to read:

16 30.18 (2) (a) 3. The diversion is a large diversion.

17 **SECTION 126.** 30.18 (2) (b) of the statutes is amended to read:

18 30.18 (2) (b) ~~Streams or~~ *Diversions from lakes.* ~~No~~ Unless a permit has been
19 issued under this section, no person, ~~except a person required to obtain an approval~~
20 ~~under s. 281.41, may divert water from any lake or stream in this state without a~~
21 ~~permit under this section if the diversion will result in a water loss averaging~~
22 ~~2,000,000 gallons per day in any 30-day period above the person’s authorized base~~
23 ~~level of water loss~~ is a large diversion.

24 **SECTION 127.** 30.18 (2) (c) of the statutes is created to read:

1 30.18 (2) (c) *Exception*. A person who is required to obtain an approval under
2 s. 281.41 to divert water is exempt from the permitting procedures in this section.

3 **SECTION 128.** 30.18 (3) (title) and (a) (title), 1. and 2. of the statutes are
4 repealed.

5 **SECTION 129.** 30.18 (3) (a) 3. of the statutes is renumbered 30.18 (3m) (a) and
6 amended to read:

7 30.18 (3m) (a) ~~For a diversion under sub. (2) (a) 2., the application shall include~~
8 written Written statements of consent to the diversion from all riparian owners who
9 are making beneficial use of the water proposed to be diverted.

10 **SECTION 130.** 30.18 (3) (a) 4. of the statutes is repealed.

11 **SECTION 131.** 30.18 (3) (b) of the statutes is repealed.

12 **SECTION 132.** 30.18 (3m) (intro.) of the statutes is created to read:

13 30.18 (3m) APPLICATIONS FOR PERMITS; SPECIFIC REQUIREMENTS. (intro.) An
14 application for a permit under this section to divert water from a stream for the
15 purpose of agriculture or irrigation shall include all of the following:

16 **SECTION 133.** 30.18 (3m) (b) of the statutes is created to read:

17 30.18 (3m) (b) Evidence of permission or authority to enter any land through
18 which it is proposed to divert the water for the purpose of obtaining information
19 required for drafting the plans for the project.

20 **SECTION 134.** 30.18 (4) (title) of the statutes is amended to read:

21 30.18 (4) (title) NOTICE OF AND HEARING ON APPLICATION.

22 **SECTION 135.** 30.18 (4) (a) of the statutes is amended to read:

23 30.18 (4) (a) Upon receipt of a complete application for a permit under this
24 section, the department shall follow the notice and hearing procedures under s. 30.02

25 (3) and (4) ~~30.245~~. give notice under s. 30.245(1) or shall
deny the application as provided under
s. 30.245(2)

(am) In addition to the notice requirements under s. 30.02 (3) and (4) 30.245, the department shall mail a copy of the notice to every person upon whose land any part of the canal or any other structure will be located, to the all of the following:

2. ~~the~~ The clerk of the ~~next town~~ municipality that is the next municipality downstream, to the.

3. ~~the~~ The clerk of any village or city each municipality in which the lake or stream from which water is proposed to be diverted is located and which is adjacent to any municipality in which the diversion will take place and to each.

4. ~~the~~ Each person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

SECTION 136. 30.18 (4) ^(a) ~~(am)~~ 1. and ^{is} ~~2~~ of the statutes ~~are~~ created to read:

30.18 (4) ^(a) ~~(am)~~ 1. Each owner of land over which water is proposed to be diverted.

2. ~~Each local governmental unit under s. 30.04 (2).~~

SECTION 137. 30.18 (4) (b) of the statutes is amended to read:

30.18 (4) (b) If a hearing on the application for a permit under this section is conducted as a part of a hearing under s. 293.43, the notice and hearing provisions in that section supersede the notice and hearing provisions of par. (a) 30.244 ^{under ss. 30.244} and ^{and}

SECTION 138. 30.18 (5) (title) of the statutes is repealed and recreated to read:

30.18 (5) (title) ISSUANCE OF PERMITS.

SECTION 139. 30.18 (5) (a) (intro.) of the statutes is amended to read:

30.18 (5) (a) *Streams*. (intro.) The department shall approve an application for a permit required under sub. (2) (a) to divert water from a stream if the department determines ~~both~~ that all of the following apply:

SECTION 140. 30.18 (5) (a) 1. of the statutes is amended to read:

INSERT
40-3

1 30.18 (5) (a) 1. ~~That the~~ The proposed diversion will not injure any public rights
2 ~~in navigable waters be detrimental to the public interest.~~

 ****NOTE: Isn't this a substantive change? Doesn't this mean any public interest,
not just the public's interest in navigable waters?

3 **SECTION 141.** 30.18 (5) (a) 1m. of the statutes is created to read:

4 30.18 (5) (a) 1m. The proposed diversion is for use on riparian land.

 ****NOTE: Again, isn't this a substantive change?

5 **SECTION 142.** 30.18 (5) (a) 2. of the statutes is amended to read:

6 30.18 (5) (a) 2. ~~That the~~ Either the water to be diverted is surplus water, or if
7 ~~it is not surplus water, that all riparians not being beneficially used for all riparian~~
8 ~~owners~~ who may be adversely affected by the diversion have consented to the
9 proposed diversion.

10 **SECTION 143.** 30.18 (5) (a) 3. of the statutes is created to read:

11 30.18 (5) (a) 3. The grounds for approval specified under s. 281.35 (5) (d) are
12 met if the diversion is a large diversion.

13 **SECTION 144.** 30.18 (5) (b) of the statutes is amended to read:

14 30.18 (5) (b) ~~Streams or lakes~~ Lakes. The department shall approve an
15 application for a permit required under sub. (2) (b) to divert water from a lake if the
16 grounds for approval specified under s. 281.35 (5) (d) are met and, if the permit is also
17 required under sub. (2) (a), if the department makes the determinations specified
18 under par. (a).

19 **SECTION 145.** 30.18 (6) (title) of the statutes is amended to read:

20 30.18 (6) (title) ~~PERMITS; USE OF WATER;~~ PERMIT CONDITIONS; REPORTING; REVIEW.

21 **SECTION 146.** 30.18 (6) (a) of the statutes is amended to read:

22 30.18 (6) (a) *Contents of permit.* The department shall specify on each permit
23 issued under this section the quantity of water that may be diverted and the times

1 during which water may be diverted. In addition, if the permit is one which is
2 required under sub. (2) (b) for a large diversion, the permit shall comply with s.
3 281.35 (6).

4 **SECTION 147.** 30.18 (6) (b) of the statutes is renumbered 30.18 (6) (dm) and
5 amended to read:

6 30.18 (6) (dm) *Use of water.* A person who is issued a permit for the purpose
7 of irrigation or agriculture may use the water on any land contiguous to the
8 permittee's riparian land, but may not withdraw more water than ~~it did~~ the
9 permittee withdrew before August 1, 1957, ~~without applying to the department for~~
10 ~~a modification of the permit~~ unless the department approves the additional amount
11 to be withdrawn by modifying the permittee's permit.

12 **SECTION 148.** 30.18 (6) (c) of the statutes is renumbered 30.18 (6) (bm) and
13 amended to read:

14 30.18 (6) (bm) *Reporting required.* ~~The department shall require each~~
15 ~~permittee~~ A person who is issued a permit under this section ~~to report its~~ shall report
16 to the department the volume and rate of withdrawal and its volume and rate of
17 water loss, ~~if any.~~ The report shall be in the form and at the times specified by the
18 department.

19 **SECTION 149.** 30.18 (6) (cm) 3. of the statutes is created to read:

20 30.18 (6) (cm) 3. A permit issued under this section before August 1, 1957, is
21 exempt from the review requirements under subds. 1. and 2.

22 **SECTION 150.** 30.18 (6) (d) (title) of the statutes is renumbered 30.18 (6) (cm)
23 (title).

24 **SECTION 151.** 30.18 (6) (d) of the statutes is renumbered 30.18 (6) (cm) 1. and
25 amended to read:

SECTION 30.18 (6m) RESCISSION.
(title) 25
RC; 30.18 (6m) (title)

30.18 (6) (cm) 1. If the permit is one that is required under sub. (2) (a), but not under sub. (2) (b), and the permit was issued on or after August 1, 1957, Except as provided in subds. 2. and 3. the department shall review the permit at least once every 5 years.

2. If the permit is one that is required under sub. (2) (b) for a large diversion, the department shall review the permit as required under s. 281.35 (6) (b).

SECTION 152. 30.18 (6m) (a) (intro.) of the statutes is amended to read:

30.18 (6m) (a) Streams; mandatory ~~revocation~~ ^{RESCISSION} (intro.) The department shall rescind ~~revoke~~ a permit issued under sub. (5) (a), which is not subject to sub. (2) (b), if it a permit for a large diversion, if the department finds that any of the following applies:

SECTION 153. 30.18 (6m) (a) 1. and 2. of the statutes are amended to read:

30.18 (6m) (a) 1. ~~That the~~ The water being diverted is no longer surplus water, except that the department may allow the diversion to continue if all riparians has become water that is being beneficially used, unless all riparian owners adversely affected by the diversion continue to consent to it.

2. If the diversion is from a stream designated by the department as a trout stream, ~~that the revocation~~ the rescission is desirable for conservation purposes.

SECTION 154. 30.18 (6m) (b) of the statutes is amended to read:

30.18 (6m) (b) Streams; discretionary ~~revocation~~ ^{RESCISSION} The department may rescind ~~revoke~~ any permit issued under sub. (5) (a), which is not subject to sub. (2) (b), if it a permit for a large diversion, if the department finds that the diversion is detrimental to the stream from which the water is diverted.

SECTION 155. 30.18 (6m) (c) of the statutes is amended to read:

rescind

1 30.18 (6m) (c) Large diversion. The department may ~~revoke~~ ^{rescind} a permit issued
2 under sub. (5) (b) this section for a large diversion only as provided under s. 281.35
3 (6).

4 **SECTION 156.** 30.18 (7) of the statutes is amended to read:

5 30.18 (7) PREREQUISITES TO PROJECT CONSTRUCTION WORK. ~~After an application~~
6 ~~under this section has been filed with the department, the applicant may enter any~~
7 ~~land through which it is proposed to divert the water for the purposes of making any~~
8 ~~surveys required for drafting the plans for the project, but no work shall~~ Work may
9 not be commenced on the canal, headworks, or other structures necessary for the
10 project for which a permit has been issued under this section until the plans for the
11 ~~same canal, headworks, or other structures~~ have been approved by the department.
12 Any person ~~having received~~ who has been issued a permit required under sub. (2) (5)
13 (a) for a diversion that is not a large diversion may ~~construct~~ commence the work
14 ~~upon the land of another the canal and other works~~ as authorized by the permit only
15 ~~after the damage which will be sustained by the owner or owners of such~~ of that land
16 ~~has been satisfied, or has been determined as provided for in ch. 32, and compensated~~
17 for any damages that the owner will incur as a result of the work or after the final
18 sum so for condemnation of the property under ch. 32 has been determined and all
19 ~~costs have been paid to the~~ [✓] persons entitled thereto owner or to the clerk of the circuit
20 court on their the owner's account.

NOTE: Current s. 30.18 (7) allows the applicant to "enter any land through which it is proposed to divert water", after the permit application is filed, to conduct surveys. This provision is deleted, and replaced by a requirement in new s. 30.18 (3m) (a) for the applicant to obtain permission or authority to enter the land.

21 **SECTION 157.** 30.18 (8) of the statutes is renumbered 30.353 and amended to
22 read:

1 **30.353 Department may raise water elevations.** If after examination and
2 investigation the department determines that it is necessary to raise water
3 elevations in any navigable ~~stream or lake~~ body of water for conservation purposes,
4 the department may, if funds are available from any source other than license fees,
5 determine and establish the elevations to which the water may be raised or
6 maintained, but the water elevation may not be established below the normal
7 elevation. If any lands are damaged by raising the water levels above normal and
8 the department cannot acquire the right to flow the lands by agreement with the
9 owner, the department may acquire the lands or the right to flow the lands by
10 condemnation under ch. 32.

11 **SECTION 158.** 30.18 (9) of the statutes is repealed.

12 **SECTION 159.** 30.19 (1) (intro.) of the statutes is renumbered 30.19 (1g) (intro.)
13 and amended to read:

14 **30.19 (1g) PERMITS REQUIRED.** (intro.) Unless a permit has been granted by the
15 department or authorization issued under this section or has been granted by the
16 legislature, it is unlawful no person may do any of the following:

17 **SECTION 160.** 30.19 (1) (a) of the statutes is renumbered 30.19 (1g) (a) and
18 amended to read:

19 **30.19 (1g) (a)** ~~To construct~~ Construct, dredge, or enlarge any artificial
20 ~~waterway, canal, channel, ditch, lagoon, pond, lake or similar waterway where the~~
21 ~~purpose is ultimate connection with an existing navigable stream, lake or other~~
22 ~~navigable waters, or where~~ water body that connects with an existing navigable
23 waterway.

1 ~~(am) Construct, dredge, or enlarge~~ any part of the ~~an~~ artificial waterway water
2 body that is located within 500 feet of the ordinary high-water mark of an existing
3 navigable stream, lake or other navigable waters waterway.

4 **SECTION 161.** 30.19 (1) (b) of the statutes is renumbered 30.19 (1g) (b) and
5 amended to read:

6 30.19 (1g) (b) ~~To connect any natural or artificially constructed~~ Connect, by a
7 navigable surface channel, any navigable waterway, canal, channel, ditch, lagoon,
8 pond, lake or similar waterway or any artificial water body with an existing body of
9 navigable water, ~~for navigation or any other purpose~~ waterway.

10 **SECTION 162.** 30.19 (1) (c) of the statutes is renumbered 30.19 (1g) (c) and
11 amended to read:

12 30.19 (1g) (c) ~~To grade or otherwise~~ Grade or remove top soil topsoil from the
13 bank of any navigable ~~stream, lake or other body of navigable water~~ waterway where
14 the area exposed by such ~~the~~ grading or removal will exceed 10,000 square feet.

15 **SECTION 163.** 30.19 (1b) of the statutes is created to read:

16 30.19 (1b) DEFINITION. In the section, “artificial water body” means a proposed
17 or existing body of water that does not have a history of being a natural body of water
18 or part of a natural body of water.

19 **SECTION 164.** 30.19 (1m) (intro.) of the statutes is amended to read:

20 30.19 (1m) ~~EXCEPTION.~~ EXCEPTIONS. (intro.) Subsection ~~(1)~~ (1g) does not apply
21 to any of the following:

22 **SECTION 165.** 30.19 (1m) (a) of the statutes is amended to read:

23 30.19 (1m) (a) The construction and or repair of any public highways highway.

24 **SECTION 166.** 30.19 (1m) (b) of the statutes is amended to read:

25 30.19 (1m) (b) Any agricultural ~~uses~~ use of land.

1 **SECTION 167.** 30.19 (1m) (c) and (d) of the statutes are repealed.

2 **SECTION 168.** 30.19 (1m) (e) of the statutes is amended to read:

3 30.19 (1m) (e) Any work required to maintain the original dimensions of an
4 enlargement of ~~a waterway authorized~~ an artificial water body done pursuant to a
5 permit or legislative authorization under sub. (1) (a) ~~or (b)~~ (1g) (a).

 ***NOTE: Under s. 30.19 (1m) (e) enlargements are authorized only under s. 30.19
(1) (a) and not s. 30.19 (1) (am) or (b). Is the above what is intended?

6 **SECTION 169.** 30.19 (2) (intro.) and (a) to (d) of the statutes are repealed.

7 **SECTION 170.** 30.19 (2) (e) of the statutes is renumbered 30.19 (3b) (b) ² and
8 amended to read: In addition to the notice requirements under
s. 30.246(2), the department shall provide notice

9 30.19 (3b) (b) ~~The name and address of the~~ ^{to the} secretary of any property owners'
10 association pertaining formed with respect to the bodies of water affected by the
11 project ~~or if there is no such association, the names and addresses of.~~ If no property
12 owners' association exists, the department shall provide ^{give} notice to at least 5 persons
13 who own real property located adjacent to the bodies of water. If fewer than 5 persons
14 own real property located adjacent to the bodies of water, the names and addresses
15 of such the department shall provide ^{give} notice to these persons that own real estate so
16 located shall be given.

17 **SECTION 171.** 30.19 (2) (f) of the statutes is repealed.

18 **SECTION 172.** 30.19 (3) (title) of the statutes is repealed.

19 **SECTION 173.** 30.19 (3) (a) of the statutes is renumbered 30.19 (3b) (b) 4. and
20 amended to read:

21 30.19 (3b) (b) 4. ~~Section 30.02 (3) and (4) applies to permit applications under~~
22 ~~sub. (1) (b) and (c). Notice shall be provided to the clerks of the county and~~
23 ~~municipality in which the project or affected body of water is located and to the~~

1 ~~persons under sub. (2) (e). For The Milwaukee Metropolitan Sewerage District for~~
2 ~~any permit application which affects for a project that would affect the Milwaukee~~
3 ~~River, the Menomonee River, the Kinnickinnic River, the Root River, or any tributary~~
4 ~~of those rivers, special notice shall be given to the Milwaukee metropolitan sewerage~~
5 ~~district. The metropolitan sewerage district shall have 30 days to respond to the~~
6 ~~special notice.~~

7 SECTION 174. 30.19 (3) (b) of the statutes is repealed.

8 (file) and (a) and (c) are
SECTION 175. 30.19 (3b) of the statutes is created to read:

9 30.19 (3b) (file) NOTICE AND HEARING UPON APPLICATION. (a) Upon receipt of a complete
10 application for a permit under sub. (1g) (b) or (c), the department shall follow the
11 notice and hearing procedures under s. 30.245.

12 no 4 (b) In addition to the notice requirements under s. 30.245, the department shall
13 provide notice to all of the following.

- 14 1. Each local governmental unit under s. 30.04 (2).
15 1. 2. The clerk of each municipality in which the project or affected artificial water
16 body or navigable waterway is located.

***NOTE: Mark — Regarding the phrase “provide notice” here and elsewhere in the
draft: What type of notice? Written? E-mail? Internet posting?

17 SECTION 176. 30.19 (4) of the statutes is renumbered 30.19 (4) (intro.) and
18 amended to read:

19 30.19 (4) ISSUANCE OF PERMIT. (intro.) If the department finds that the project
20 will not injure public rights or interest, including fish and game habitat, that the The
21 department shall issue a permit applied for under this section if the department
22 determines that all of the following apply:

INSERT
48-11

INSERT
48-16

1 (b) The project will not cause environmental pollution as defined in s. 299.01
2 ~~(4), that any.~~

3 (c) Any enlargement connected to a navigable waterways conforms to the
4 requirement of waterway complies with all of the laws for the relating to platting of
5 land and for sanitation and that no.

6 (d) No material injury will result to the rights of any riparian owners ~~on any~~
7 body of water affected will result, the department shall issue a permit authorizing
8 the enlargement of the affected waterways of land that abuts a natural water body
9 or artificial water body that is affected by the project.

10 SECTION 177. 30.19 (4) (a) of the statutes is created to read:

11 30.19 (4) (a) The project will not be detrimental to the public interest.

12 SECTION 178. 30.19 (5) of the statutes is amended to read:

13 30.19 (5) ~~CONDITIONS OF PERMIT PERMIT CONDITIONS.~~ REQUIREMENT FOR
14 this section to construct an artificial water body and to connect it to a navigable
15 waterway shall provide that all require that the artificial waterways constructed
16 under this section which are connected to navigable waterways shall be water body
17 be a public waterways. PUBLIC ACCESS
18 ~~The department may impose such further conditions in the~~
19 ~~permit as it finds reasonably necessary to protect public health, safety, welfare,~~
 ~~rights and interest and to protect private rights and property waterway.~~

****NOTE: This is the only place in this subchapter where "pubic waterway" will be used. Should this term be changed?

NOTE: This provision continues the applicability of notice and hearing provisions only to permit applications under sub. (2) (b) and (c). Under the current statute, the notice and hearing is not required for dredging artificial water bodies for the purpose of connection to a navigable waterway or where part of the artificial water body is within 500 feet of the ordinary high-water mark of the navigable waterway. In addition, an exemption from the notice and hearing is provided for grading or removing topsoil from the bank of navigable waters where the only effect is on water quality. This exemption allows DNR to develop a "short form" permit for grading or removing topsoil from the

bank where advance notice is given to the department and the work conforms to rules of the department that describe methods for such work.

NOTE: Current s. 30.19, which requires a permit for enlargement and protection of waterways, contains an exception for navigable lakes and streams and any portion of Lake Michigan within Milwaukee County. This exception is not included in this bill so that s. 30.19 will apply uniformly to all navigable waters. However, current s. 30.05 (renumbered s. 30.223) continues to apply where lake bed grants have been made.

1 **SECTION 179.** 30.195 (1) of the statutes is amended to read:

2 30.195 (1) PERMIT REQUIRED. No Unless a permit has been issued under this
3 section or authorization has been granted by the legislature, no person may change
4 the course of or straighten a navigable stream without a permit issued under this
5 section or without otherwise being expressly authorized by statute to do so.

6 **SECTION 180.** 30.195 (2) of the statutes is repealed and recreated to read:

7 30.195 (2) PERMIT APPLICATION. Upon receipt of a complete application for a
8 permit under this section, the department shall follow the notice and hearing
9 procedures under s. 30.245 if the activity involves the relocation of more than a total
10 of 500 feet in stream length.

****NOTE: What if it is less than 500 feet in length? Additional language is needed.

11 **SECTION 181.** 30.195 (3) of the statutes is renumbered 30.195 (3) (intro.) and
12 amended to read:

13 30.195 (3) GRANTING ISSUANCE OF PERMIT. (intro.) ~~Upon application therefor,~~
14 ~~the~~ The department shall grant issue a permit to the applied for under this section
15 if the department determines that all of the following apply:

16 (a) The applicant is the owner of any the land to change the course of or
17 straighten a upon which the change in course or straightening of the navigable
18 stream on such land, if such will occur.

19 (b) The proposed change of course or straightening of the navigable stream will
20 improve the economic or aesthetic value of the owner's applicant's land and will.

INSERT
50-10

1 (c) The proposed change of course or straightening of the navigable stream will
2 not adversely affect the flood flow capacity of the stream or otherwise be detrimental
3 to ~~public rights or~~ the public interest.

4 (d) The proposed change of course or straightening of the navigable stream will
5 not be detrimental to the rights of other ~~riparians~~ riparian owners located on the
6 stream. If the department finds that the rights of ~~such riparians~~ these riparian
7 owners will be adversely affected, it may ~~grant~~ issue the permit only with ~~their~~ the
8 consent. ~~Such permit may be granted on the department's own motion after its own~~
9 ~~investigation or after public hearing and after giving prior notice of such~~
10 ~~investigation or hearing of all of these riparian owners.~~

11 **SECTION 182.** 30.195 (4) and (7) of the statutes are repealed.

NOTE: It is not clear whether current s. 30.195 is subject to the requirement of a notice and hearing. Current s. 30.02 provides that the notice and hearing provisions of that statute apply in any proceeding under ch. 30 where public notice is required. Under s. 30.195 (3), the DNR may issue a permit either on its own motion or after a public hearing. This does not appear to be a clear statement that a public hearing is required, and it is therefore uncertain whether the notice and hearing requirement of current s. 30.02 applies. This bill makes the permit under s. 30.195 subject to the notice and hearing requirements of new s. 30.245 for relocation of more than 500 feet of stream length, which corresponds with the division between type II and type III actions regarding stream locations for environmental review under ch. NR 150, Wis. Adm. Code.

This bill eliminates the current provision in s. 30.195 (4) that states that no common law liability and no liability under any other statute for damages resulting from the change in the course of the stream or straightening a stream is affected by s. 30.195. Nothing in current s. 30.195, or s. 30.195 as amended by this bill, suggests that an exemption from liability is created. Compliance with the provisions in a permit under s. 30.195 may have a bearing on the issue of negligence, but current s. 30.195 (4) is unnecessary. Also, the provision in the current statute that creates a presumption of exercising due care in complying with a permit is better addressed by the court as part of a negligence action.

The exception for land owned by Milwaukee County or a city, village or town in Milwaukee County is deleted. This provision was originally created as part of s. 30.195 when it was adopted in 1961, and was added as a floor amendment. This exception is not included in this bill so that s. 30.195 will apply uniformly to all navigable waters.

12 **SECTION 183.** 30.196 of the statutes is renumbered 30.313, and 30.313 (intro.),
13 as renumbered, is amended to read:

1 **30.313 Enclosure of navigable waters; issuance of permits to**
2 **municipalities.** (intro.) A municipality may enclose navigable waters by directing,
3 placing, or restricting navigable waters into an enclosed drain, conduit, storm sewer,
4 or similar structure if the department ~~grants~~ ^{the} issues the municipality a permit. ^{for the} ~~The~~
5 ~~Upon receipt of an application from the municipality, the~~
6 ~~department may grant~~ ^{issue the} this permit to a municipality after following the notice
7 and hearing requirements under s. 30.02 (3) and (4) if it ~~30.245~~ if the department
finds that ~~granting~~ ^{issuing} the permit:

8 **SECTION 184.** 30.20 (1) (title) of the statutes is repealed and recreated to read:

9 30.20 (1) (title) CONTRACT OR PERMIT REQUIRED.

10 **SECTION 185.** 30.20 (1) (a) of the statutes is amended to read:

11 30.20 (1) (a) No Unless a contract has been entered into with the department
12 under sub. (2), no person may remove any material from the bed of any navigable lake
13 or from the bed of any outlying waters of this state without first obtaining a contract
14 as provided in sub. (2). ^{PLAIN}

15 **SECTION 186.** 30.20 (1) (b) of the statutes is amended to read:

16 30.20 (1) (b) ~~Except as provided under pars. (c) and (d), no~~ Unless a permit has
17 been issued under sub. (3), no person may remove any material from the bed of any
18 lake or stream not mentioned under described in par. (a) without first obtaining a
19 permit from the department under sub. (2) (c).

****NOTE: I added "under sub. (3)". OK? Or is the intent to refer to other permits
issued by DNR?

20 **SECTION 187.** 30.20 (1) (c) 1. of the statutes is repealed.

21 **SECTION 188.** 30.20 (1) (c) 2. of the statutes is renumbered 30.215 (2) (a) 2. and
22 amended to read:

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1 30.215 (2) (a) 2. The proposed project involves the proposed removal of material
2 from ^athe farm drainage ditch and the department may require a permit under sub.
3 (2) (c) for a removal under subd. 1. only if it finds that the proposed removal may have
4 a long-term adverse effect on cold-water fishery resources or may destroy fish
5 spawning beds or nursery areas.

6 **SECTION 189.** 30.20 (1) (c) 3. of the statutes is renumbered 30.215 (2) (b) and
7 amended to read:

8 30.215 (2) (b) A person who proposes ~~a removal under subd. 1. which may have~~
9 ~~an effect on cold-water fishery resources or may affect fish spawning beds or nursery~~
10 ~~areas of material from a farm drainage ditch under the exemption under~~ ^{that may} par. (a) 2.
11 shall notify the department at least 10 days prior to the date that the removal is
12 proposed to start. The department shall determine whether the exemption applies
13 within the 10-day period.

****NOTE: MGG — The reference to “exemption under par. (a) 2.” needs to be changed
since par. (a) 2. does not contain an exemption.

14 **SECTION 190.** 30.20 (1) (d) of the statutes is renumbered 30.263 (3) and
15 amended to read:

16 30.263 (3) The drainage board for the Duck Creek Drainage District may,
17 without a permit under sub. (2) (c) s. 30.20 (3), remove material from a drain that the
18 board operates in the Duck Creek Drainage District if the removal is required, under
19 rules promulgated by the department of agriculture, trade and consumer protection,
20 in order to conform the drain to specifications imposed by the department of
21 agriculture, trade and consumer protection after consulting with the department of
22 natural resources.

23 **SECTION 191.** 30.20 (2) (title), (a) and (b) of the statutes are amended to read:

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1 30.20 (2) (title) CONTRACTS FOR REMOVAL FROM NAVIGABLE LAKES AND OUTLYING
2 WATERS. (a) The department, ~~whenever consistent with public rights,~~ may enter into
3 ~~contracts~~ a contract on behalf of the state for the removal and lease or sale of any
4 material from the bed of any navigable lake or of any of the outlying waters, and for
5 ~~the lease or sale of the material.~~ Every. Each contract entered into under this
6 paragraph shall contain ~~such~~ any conditions as ~~may be~~ that the department
7 determines are necessary for the protection of the public interest and the interests
8 interest of the state and. Each contract entered into under this paragraph shall fix
9 the compensation to be paid to the state for the material ~~so to be~~ removed, except that
10 ~~no the contract may not require that any~~ compensation may be paid for the material
11 if the contract is with a municipality, as defined in s. 281.01 (6), and if the material
12 ~~is to~~ will be used for a municipal purpose and will not ~~for resale.~~ No be resold. Each
13 contract entered into under this paragraph may not run for ~~a longer period~~ more
14 than 5 years.

15 (b) The department, ~~whenever consistent with public rights,~~ may enter into
16 ~~contracts~~ a contract on behalf of the state for the removal of any mineral, ore and,
17 or other material from beneath the bed of a navigable lakes and waters, where water
18 that the state may own if the contract will be consistent with public rights and if the
19 ~~waters would~~ navigable water will not be disturbed in the removal operation and for
20 ~~the lease and sale of such mineral, material and ore and provide the necessary~~
21 ~~regulations for all acts incident thereto.~~ Every such. Each contract entered into
22 under this paragraph shall contain ~~such~~ any conditions as ~~may be~~ that the
23 department determines are necessary for the protection of the public interest and the
24 interests interest of the state, and. Each contract entered into under this paragraph
25 shall fix the compensation to be paid to the state for the material, mineral and ore

1 so mineral, ore, or other material to be removed. No Each contract entered into,
2 pursuant to under this paragraph, shall may not run for a longer period more than
3 75 years. Should any doubt exist as to whether the state, in fact, owns such lake bed
4 or stream bed such contract or lease shall be for such interests, if any, as the state
5 may own. Title to the royalties to be paid when After mining operations are have
6 begun, the department shall be determined at such future time as determine the date
7 before which the royalties for ores so sold are paid or any mineral, ore, or other
8 material that is removed and sold are due and payable.

9 SECTION 192. 30.20 (2) (c) of the statutes is renumbered 30.20 (3) (a) and
10 amended to read:

11 30.20 (3) (a) ~~A permit~~ The department may issue a permit to remove material
12 from the bed of any lake or stream not ~~included~~ described in sub. (1) (a) ~~may be issued~~
13 ~~by if~~ the department if it finds that the issuance of such a ~~the~~ permit will be
14 consistent with the public interest in the water involved. A permit or contract issued
15 under this paragraph ~~may be issued for up to 10 years if the applicant notifies the~~
16 ~~department at least 30 days before removing any material~~ lake or stream.

***NOTE: Regarding the 30-day time frame in s. 30.20: What if less than 30 days' notice is given? Also, *under current law this provision applies to both contracts and permits.*

17 SECTION 193. 30.20 (3) (title) and (b) of the statutes are created to read:

18 30.20 (3) (title) PERMITS FOR REMOVAL FROM OTHER WATERS.

19 (b) If an applicant for a permit submits the application at least 30 days before
20 the proposed date of the removal, the department may issue the permit for a period
21 of up to 10 years.

NOTE: Current s. 30.20 does not contain a requirement for public notice or a hearing under s. 30.02. This bill makes a permit or contract under s. 30.20 subject to the notice and hearing requirements of new s. 30.245 for dredging that involves the removal of more than 3,000 cubic yards, which corresponds with the threshold for a type II action for purposes of environmental review under ch. NR 150, Wis. Adm. Code.

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21

1 **SECTION 194.** 30.202 of the statutes is renumbered 30.333, and 30.333 (3), as
2 renumbered, is amended to read:

3 **30.333 (3) EXEMPTION FROM STATUTES AND RULES.** Dredge spoil disposal activities
4 authorized under sub. (2) are exempt from any prohibition, restriction, requirement,
5 permit, license, approval, authorization, fee, notice, hearing, procedure, or penalty
6 specified under this chapter, s. 29.601, ~~30.01 to 30.20, 30.21 to 30.99, 59.692, 61.351,~~
7 ~~62.231,~~ or 87.30, or chs. 281 to 285 or 289 to 299, except s. 281.48, or specified in any
8 rule promulgated, order issued, or ordinance adopted under those sections or
9 chapters.

10 **SECTION 195.** 30.2025 of the statutes is renumbered 30.278, and 30.278 (5) (d),
11 as renumbered is amended to read:

12 **30.278 (5) (d)** It may not cause environmental pollution, ~~as defined in s. 299.01~~
13 ~~(4).~~

14 **SECTION 196.** 30.2026 of the statutes is renumbered 30.279, and 30.279 (2) (d)
15 and (3) (a), as renumbered, are amended to read:

16 **30.279 (2) (d)** The village of Belleville shall create any artificial barrier under
17 this section in compliance with all state laws that relate to navigable bodies of water,
18 except s. 30.12 (1) and ~~(2).~~

19 **(3) (a)** The village of Belleville shall maintain any artificial barrier created as
20 authorized under sub. (1). If a landowner of more than 500 feet of Lake Belle View
21 shoreline, a portion of which is located within 1,000 feet of any such artificial barrier,
22 is dissatisfied with the manner in which the village of Belleville is maintaining the
23 barrier, the owner may maintain the barrier in lieu of the village, upon approval of
24 the department. The village or a landowner who maintains the barrier shall comply
25 with all state laws that relate to navigable bodies of water, except s. 30.12 (1) and ~~(2).~~

1 The department may require the village of Belleville or the landowner to maintain
2 the barrier in a structurally and functionally adequate condition.

****NOTE: I removed the cross-references to s. 30.12 (2) in s. 30.279 (2) (d) and (3)
(a), as renumbered, because they seemed redundant and confusing.

3 **SECTION 197.** 30.203 of the statutes is renumbered 30.355, and 30.355 (4) (d),
4 as renumbered, is amended to read:

5 30.355 (4) (d) It may not cause environmental pollution, ~~as defined in s. 299.01~~
6 (4).

7 **SECTION 198.** 30.2035 of the statutes is repealed.

NOTE: The repealed statute requires the DNR to undertake a shoreline protection
study. This study has been issued and the DNR is in the process of promulgating rules.

8 **SECTION 199.** 30.2037 of the statutes is renumbered 30.267.

9 **SECTION 200.** 30.204 of the statutes is renumbered 30.373, and 30.373 (5), as
10 renumbered, is amended to read:

11 30.373 (5) EXEMPTION FROM CERTAIN STATUTES AND RULES. Activities of the
12 department in conducting the lake acidification experiment are exempt from any
13 prohibition, restriction, requirement, permit, license, approval, authorization, fee,
14 notice, hearing, procedure, or penalty specified under this subchapter and subchs.
15 V and VI and s. 29.601 (3), 30.01 to 30.03, 30.06 to 30.16, 30.18 to 30.29, 30.50 to
16 30.99, 59.692, 61.351, 62.231, 87.30, 287.81, 299.15 to 299.23, 299.91, 299.95, or
17 299.97 or chs. 281, 283 or 289 to 292 or specified in any rule promulgated, order
18 issued, or ordinance adopted under any of those sections or chapters.

19 **SECTION 201.** 30.205 of the statutes is renumbered 30.335, and 30.335 (title),
20 as renumbered, is amended to read:

21 30.335 (title) **Water resources development projects; federal**
22 **agreements.**

1 **SECTION 202.** 30.206 of the statutes is renumbered 30.221, and 30.221 (1) and
2 (7), as renumbered, are amended to read:

3 30.221 (1) For activities which require a permit or ~~approval~~ [✓] under ss. 30.12 (3)
4 (a) and 30.19 ~~(1)~~ (1g) (a), the department may issue a general permit authorizing a
5 class of activities, according to rules promulgated by the department. Before issuing
6 general permits, the department shall determine, after an environmental analysis
7 and notice and hearing under ss. 227.17 and 227.18, that the cumulative adverse
8 environmental impact of the class of activity is insignificant and that issuance of the
9 general permit will not injure public rights or interest, cause environmental
10 pollution, ~~as defined in s. 299.01 (4)~~, or result in material injury to the rights of any
11 riparian owner.

12 (7) This section does not apply to an application for a general permit for the
13 Wolf River and Fox River basin area or any area designated under s. ~~30.207~~ 30.223
14 (1m) if the application for the general permit may be submitted under s. ~~30.207~~
15 30.223.

16 **SECTION 203.** 30.207 of the statutes is renumbered 30.223, and 30.223 (1), (3)
17 (a) and (c) 6., (4) (c) 1., (5), (6) (a) and (7) (a) and (b), as renumbered, are amended to
18 read:

19 30.223 (1) GEOGRAPHICAL AREA. For purposes of this section and s. ~~30.12 (3) (bt)~~
20 30.276, the Wolf River and Fox River basin area consists of all of Winnebago County;
21 the portion and shoreline of Lake Poygan in Waushara County; the area south of
22 STH 21 and east of STH 49 in Waushara County; that portion of Calumet County in
23 the Lake Winnebago watershed; all of Fond du Lac County north of STH 23; that
24 portion of Outagamie County south and east of USH 41; that portion of Waupaca
25 County that includes the town of Mukwa, city of New London, town of Caledonia,

town of Fremont; and the portion and shoreline of Partridge Lake and the Wolf River in the town of Weyauwega.

(3) (a) Any local entity, as defined listed in s. 30.77 (3) ~~(dm)~~ (11) (a), any group of 10 riparian owners who will be affected by the issuance of a general permit, or any contractor who is or has been involved in the construction of structures or along navigable waters may apply for a general permit under this section.

(c) 6. The names and addresses of at least 5 persons who own real property located adjacent to the navigable waters located in the proposed permit area. If fewer than 5 persons own real property adjacent to such these waters, the application shall include the names and addresses of all of these persons.

(4) (c) 1. Any local entity, as defined in s. 30.77 (3) ~~(dm)~~, (11) (a) that has an interest in the quality or use of or that has jurisdiction over the navigable waters located in the proposed permit area.

(5) HEARING REQUIREMENTS. If an activity for which an application for which a general permit has been submitted would be subject to the hearing and notice provisions under s. 30.02 (3) and (4) SS. 30.244 and 30.245 ^{Strike space} for the issuance of an individual permit, the department shall comply with those provisions. ~~Notice and hearing shall be required on an application for a general permit under this section only if a notice and hearing are required under s. 30.02 (3) and (4) for the activity as part of an application for an individual permit under this chapter.~~

(6) (a) The department shall issue a general permit under this section if the department determines that the cumulative adverse environmental impact of the activity in the proposed permit area is insignificant and that the issuance of the general permit will not injure public rights or interest, cause environmental

*** NOTE: Mark - I took out the last sentence of S. 30.207 (5) because I thought it was no longer necessary.

1 pollution, as defined in s. ~~299.01 (4)~~, or result in material injury to the rights of any
2 riparian owners.

3 (7) (a) At least 15 days before beginning the activity that is authorized by a
4 general permit under this section, the person who wishes to conduct the activity shall
5 submit a notice to the department and shall pay the fee specified in s. ~~30.28~~ 30.243

6 (2) (b) 2. The notice shall describe the activity, state the name of the person that will
7 be conducting the activity, and state the site where the activity will be conducted.
8 The notice shall also contain a statement signed by the person conducting the
9 activity that the person will act in conformance with the standards contained in the
10 general permit.

****NOTE: Re: s. 30.207 (3) (a) and (4) (c) 1., check RNK's draft to verify that the
changes work.

11 (b) Upon receipt of a notice that complies with par. (a), the department may
12 inform the person that the activity may not be conducted under the general permit
13 if conditions at the site where the activity would be conducted would cause adverse
14 environmental impact, injure public rights and interests, or cause environmental
15 pollution, as defined in s. ~~299.01 (4)~~. The department shall respond to the person
16 within 15 days after receiving the notice. Failure of the department to respond
17 within 15 days shall constitute the department's approval of the activity under the
18 general permit.

19 **SECTION 204.** 30.21 (title), (1), (2) and (3) (title) of the statutes are renumbered
20 30.293 (title), (1), (2) and (3) (title).

21 **SECTION 205.** 30.21 (3) (a) of the statutes is renumbered 30.293 (3).

22 **SECTION 206.** 30.21 (3) (b) of the statutes is repealed.

23 **SECTION 207.** 30.213 (title) of the statutes is created to read:

1 **30.213 (title) Municipal bridge construction.**

2 **SECTION 208.** 30.215 of the statutes is created to read:

3 **30.215 Farm drainage ditches** ⁵⁶⁸ (1) **DEFINITION.** In this section, "farm
4 drainage ditch" means any artificial channel that drains water from lands that are
5 used for agricultural purposes.

6 ^{no 9} (2) **EXEMPTION.** ^{Except as provided in s. 30.20(1)(c), a} (A) ~~any~~ project that is for an agricultural purpose and is located
7 in or adjacent to a farm drainage ditch is exempt from the requirement for a permit,
8 contract, or approval under this subchapter unless any of the following applies:
9 ^{no 9} ~~any~~ the department determines that a
10 ~~any~~ A U.S. geological survey map or other reliable scientific evidence shows that
the farm drainage ditch was a stream that was a navigable water prior to ditching.

NOTE: The current statute related to farm drainage ditches is as follows:

"30.10 (4) (c) Notwithstanding any other provision of law, farm drainage ditches are not navigable within the meaning of this section unless it is shown that the ditches were navigable streams before ditching. For purposes of this paragraph, "farm drainage ditch" means any artificial channel which drains water from lands which are used for agricultural purposes."

The proposed language in new s. 30.215 differs in 2 key respects from the current statute. The primary difference is that the exemption clearly applies to a project for an agricultural purpose, not to the farm drainage ditch itself. Thus, a project for other than agricultural purposes would require a permit, even though the drainage ditch was originally constructed as and continues to be used as a farm drainage ditch.

The other difference is that the statute specifies the kind of evidence that may be used to show stream history.

11 **SECTION 209.** 30.24 of the statutes is renumbered 30.357.

12 **SECTION 210.** 30.243 (3) (c) of the statutes is created to read:

13 30.243 (3) (c) This section does not apply to a permit issued under s. 30.221.

14 **SECTION 211.** 30.245 of the statutes is created to read:

15 **30.245 Notice and hearing; mediation.** (1) ^{notice and hearing} NOTICE AND HEARING;
16 REQUIREMENT; OPTION. (a) ^{issuing} The department shall apply the ^{entering a} procedures in this section
17 with respect to ^{except as provided} a permit or ^{where the applicable} contract under this subchapter ^{on} where the applicable
18 statute requires notice and a hearing under this section.

(b) If the applicable statute for a permit or contract under this subchapter does not require notice and a hearing under this section, the department may apply the procedures in this section with respect to a permit or contract under this subchapter if the department determines that the substantial interests of any party may be adversely affected by the proceeding. This paragraph does not apply to any statute in which this section is specifically made inapplicable.

(2) DEPARTMENT MAY DENY APPLICATION. The department may deny the application for a permit or contract under this subchapter after receipt of a complete permit or contract application. If the department denies an application, it shall notify the applicant. If the applicant requests a contested case hearing within 30 days after receiving notice of the denial, the department shall submit notification of the pending hearing to the division of hearings and appeals under s. 227.43 (2) (a). The procedures in sub. (6) apply to the hearing.

(3) NOTICE. (a) Except where the department denies an application under sub. (2), and except where specific notice or hearing provisions are provided in this subchapter, after receipt of a complete permit or contract application, the department shall provide notice that it has received the application. The notice shall describe the project and the procedures under this section. The department shall provide the notice to all of the following:

1. The applicant.
2. Each local governmental unit under s. 30.04 (2).
3. Any other person required by law to receive notice.

(b) The department shall post the notice on the Internet at a site determined or approved by the department.

4. Any other person who is required to receive notice, as determined by the department.

1 (c) The applicant shall publish the notice as a class 1 notice, under ch. 985, in
2 a newspaper designated by the department that is likely to give notice in the affected
3 area. The applicant shall file proof of publication with the department. The
4 department may authorize any other person to provide the notice.

5 (4) REQUEST FOR HEARING; ACTION ON REQUEST. (a) Any person may request a
6 contested case hearing. The request for a hearing shall be in writing. If the person
7 requesting a hearing is not the applicant, the request shall describe the requester's
8 objection to the project. The objection shall contain all of the following:

9 1. A description of the legal issues with sufficient specificity so that the
10 department may determine the standards in this subchapter that the objector
11 believes may be violated if the project proceeds.

12 2. A description of the factual basis for the objection, with sufficient specificity
13 so that the department may determine how the objector believes the project, as
14 proposed, may violate the standards identified under subd. 1.

15 3. A commitment by the objector to appear and present information supporting
16 the objection in a contested case hearing.

17 (b) The department shall proceed on the application without a hearing if any
18 of the following applies:

19 1. The department does not receive a request for a contested case hearing
20 within 30 days after the notice is published under sub. (3) (c).

21 2. The request for a hearing is not in the form required in par. (a).

22 3. The objection stated by the person requesting the hearing is not a
23 substantive, written objection under par. (c).

24 (c) The department shall determine if the objection to the project as described
25 under par. (a) is a substantive, written objection. The department may request

1 additional information from a person requesting a hearing in order to make the
2 determination under this paragraph, and the person requesting a hearing shall
3 respond to the department's request within 2 weeks. A written objection is
4 substantive if it is sufficient for the department to make the following
5 determinations:

6 1. The facts described by the objector appear to be substantially true.

7 2. The facts described by the objector raise reasonable doubts as to whether the
8 project, as proposed, complies with the applicable standards in this subchapter.

9 (d) Except as provided in sub. (5), the department shall notify the division of
10 hearings and appeals under s. 227.43 (2) (a) if the request for a hearing complies with
11 this subsection.

12 (5) MEDIATION. (a) Prior to a contested case hearing, the department shall allow
13 for mediation ^{between} ~~between~~ the applicant, any person who requests a contested case
14 hearing on the permit or contract, any person with a substantial interest in the
15 permit or contract, and the department, if ^{all} ~~those~~ persons agree to mediation. The
16 participants shall determine how the mediator is to be selected and compensated.

17 (b) If the participants determine that they cannot reach an agreement in
18 mediation, any participant in the mediation may request a contested case hearing
19 within 30 days after the conclusion of mediation. The request shall be in writing and
20 shall include the information required in sub. (4) (a).

21 (c) The department shall notify the division of hearings and appeals under s.
22 227.43 (2) (a) if the department receives the request within 30 days specified in par.
23 (b) and if the request for a hearing complies with sub. (4) (a) and (c).

24 (d) The department shall proceed on the application if it does not receive a
25 request for a hearing under par. (b).

1 ~~(6) HEARING. (a) Upon receiving notification from the department under s.~~
2 227.43 (2) (a), the division of hearings and appeals shall assign a hearing examiner
3 and shall ensure that the hearing is conducted within 60 days after the notification
4 is received.

5 (b) The division of hearings and appeals shall mail a written notice at least 10
6 days before the hearing to each person given notice under sub. (3) and to any person
7 who submitted a request for a hearing.

8 (c) The applicant shall publish a class 1 notice, under ch. 985, of the hearing
9 in a newspaper designated by the department that is likely to give notice in the
10 affected area. The notice shall be published at least 10 days before the hearing. The
11 applicant shall file proof of publication under this paragraph with the hearing
12 examiner at or prior to the hearing.

NOTE: The notice and hearing provisions in current s. 30.02 are repealed and recreated here. The basic structure of this statute remains the same: the notice and hearing procedures apply to any permit or contract in which a notice and hearing is required by direct cross-reference to this section. In any other statute that provides a permit or contract for activities in navigable waters, the DNR may apply the notice and hearing procedures if the substantial interests of any party may be adversely affected by the proceeding. The statute provides a time frame within a contested case hearing may be requested and requires various notices to be mailed or published.

Proposed s. 30.245 has several major additions compared to the current statute. The first difference is that the current statute does not expressly provide that the DNR may deny the application for a permit or contract. The current statute requires the DNR either to schedule a hearing or issue notice that it will proceed without a hearing unless a request for hearing is made. As a result, an individual who opposes a permit must request a hearing, even if the DNR expects to deny the application. The new procedure allows the DNR to deny the application for a permit or contract, and the applicant may request a contested case hearing on this decision.

The 2nd difference is that the DNR is directed to post notice of the complete permit or contract application and the opportunity to request a hearing on the Internet. In addition, a provision in the current statute requiring the DNR to provide notice to any person who requests notice of projects of that type, location or other classification is eliminated. Also, notice is required to affected town sanitary districts, public inland lake protection and rehabilitation districts and county drainage boards.

The 3rd difference is that a mediation option is provided. There is no comparable provision in the current statute. The applicant and DNR must agree to be a party to the mediation. The mediation process is primarily expected to address issues of concern to owners of property near the proposed project. If an agreement is not reached in mediation, the parties to the mediation may request a contested case hearing.

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The 4th difference is that the requirement of a substantive written objection, which is a condition for obtaining a contested case hearing under the current statute, is clarified and made more detailed. The current statute requires the objector to state why the project may violate statutory provisions applicable to the project. The purpose of this requirement is to avoid contested case hearings when there is not merit to the challenge—i.e., the facts alleged by the objector are not true or do not relate to the legal standards for issuing or denying the permit. The special committee believes that the current statute, as administered by DNR, has not been sufficient to avoid challenges to permits in contested case hearings that are ultimately determined to be without merit. This bill adds to the information that must be submitted by the objector, allows the department to request additional information from the objector, and requires the department to do a thorough evaluation of the grounds for the objection, both legal and factual.

This provision omits the option for the department to schedule a public hearing upon receipt of an application, rather than providing notice of the application. This option is no longer necessary if the department is given authority to deny an application, as provided in this section.

***NOTE: MGG has not yet reviewed s. 30.245. Review should include "hearing" language in s. 30.71.

1 **SECTION 212.** 30.25 of the statutes is renumbered 30.269.

2 **SECTION 213.** 30.253 of the statutes is created to read:

3 **30.253 Permit or contract conditions.** The department may impose
4 additional conditions on a permit or contract under this subchapter if the
5 department determines that the conditions are necessary to ensure compliance with
6 any applicable provision under this subchapter.

7 **SECTION 214.** 30.26 of the statutes is renumbered 30.271.

8 **SECTION 215.** 30.263 (title) and (1) (title) of the statutes are created to read:

9 **30.263 (title) Duck Creek Drainage District. (1) (title) DECLARATION OF**
10 **NAVIGABILITY.**

11 **SECTION 216.** 30.265 of the statutes is renumbered 30.375.

12 **SECTION 217.** 30.266 (1) (intro.) of the statutes is created to read:

13 **30.266 (1) DEFINITIONS. (intro.)** In this section:

14 **SECTION 218.** 30.27 of the statutes is renumbered 30.273.

15 **SECTION 219.** 30.275 of the statutes is renumbered 30.359.

16 **SECTION 220.** 30.277 of the statutes is renumbered 30.361.

✓
____ INSERT 66-
6